IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8165 of 1991

with

CIVIL APPLICATION NO. 2334 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KANCHANBEN MAKANBHAI PATEL

Versus

DIST DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 8165 of 1991

MR YN OZA for Petitioner No. 1

MR DD VYAS for Respondent No. 1

MR MK DAGLI, AGP for Respondent No. 2-3

MR RN SHAH for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 12/08/2002

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, the petitioner, who is working as a Primary School Teacher in Main School, Sarvani, Taluka : Chikhli, District : Valsad, has prayed to set aside and quash order dated October 12, 1991, by which she has been transferred to Bid-Falia. It is also prayed to direct the respondents to transfer the petitioner at Sarvani Main School, where her husband is also employed as a Teacher.

2. The petitioner is employed as a Primary Teacher. She was appointed in Bhavnagar District since October 16, 1984 and transferred to Sarvani Main School, Taluka : Chikhali, District : Valsad in the year 1988. The petitioner is transferred to Bid-Falia from Sarvani Main School, where her husband is also serving, and one Ms. Parulataben Sombhai Patel, who was serving at Umargam, is transferred to Valsad by an order dated October 12, 1988. Feeling aggrieved by the said action, the present petition is filed, in which reliefs referred to above are claimed.

3. The petition was placed for admission hearing before the Court on November 5, 1991 and the Court while issuing rule, has granted interim relief in terms of Para-8(c) which is as under :-

"Pending admission hearing and final disposal of this petition, be pleased to stay the operation, implementation and enforcement of the order dated 12.10.1991 and be pleased to restrain the respondent no.4 herein from resuming her duties at the new place of posting and further be pleased to direct the respondents to transfer the petitioner at Mukhya Shala, Sarwani."

4. Heard the learned counsel for the parties. It is settled principle of Service Jurisprudence that ordinarily and as far as practicable, husband and wife, who are employed, should be posted at the same station even if their employers be different, pursuant to Government guidelines. The desirability is obvious. But, the guidelines do not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. Here in this case, the employer of the petitioner and her husband is the same. No reply affidavit has been filed by any of the respondents controverting the averments made in the petition, though the petition is admitted and interim

relief is granted vide order dated November 5, 1991. The respondents have failed to point out to the Court as to why they do not consider it feasible to continue the petitioner in the School where her husband is also serving as a teacher. Therefore, the petitioner, whose husband is also serving at Main School, Sarwani, should not have been transferred to Bid-Falia in absence of good reasons. Under the circumstances, I am of the view that the petitioner is entitled to the reliefs claimed by her in the petition.

For the foregoing reasons, the petition succeeds. The order dated October 12, 1991, transferring Ms. Parulataben S.Patel i.e. respondent no.4 from Umargam to the Main School at Sarwani, is set aside and quashed. The respondent nos. 2 & 3 are directed to continue to post the petitioner at Main School, Sarwani, where her husband is also serving, unless the same is not found to be feasible. Rule is made absolute with no orders as to cost.

5. As the main petition is allowed, Civil Application No. 2334/1991, for vacating the ad-interim relief granted by this Court on November 5, 1991, does not survive. Hence, it is rejected.

(J.M.Panchal,J.)

(patel)